

Appeal No. 23-1553

United States Court of Appeals
for the
Federal Circuit

APPLE INC.,

Appellant,

v.

INTERNATIONAL TRADE COMMISSION,

Appellee,

On Appeal from the United States International Trade Commission
Inv. No. 337-TA-1266

AliveCor, Inc.'s Unopposed Motion to Intervene

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Counsel for AliveCor, Inc.

Pursuant to Federal Rule of Appellate Procedure 15(d), AliveCor, Inc. moves to intervene in support of Appellee International Trade Commission (“ITC”) in the above-captioned appeal filed by Appellant Apple, Inc. AliveCor has discussed this motion with counsel for the ITC and counsel for Apple. Neither opposes this motion to intervene; neither will file a response.

In the underlying Investigation, AliveCor claimed that Apple violated Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by importing and selling certain Apple Watch models that infringe three AliveCor patents—U.S. Patent Nos. 10,595,731, 10,638,941, and 9,572,499. The ITC found that Apple violated Section 337 because it had infringed valid claims of the ’731 and ’941 patents. As to the ’499 patent, the ITC found no Section 337 violation.

AliveCor has appealed the adverse ruling concerning the ’499 patent. In that appeal, this Court granted Apple’s unopposed motion to intervene. *See Order, AliveCor Inc. v. Int’l Trade Comm’n*, No. 23-1509 (Fed. Cir. Mar. 6, 2023), Dkt. 9. Similarly, in the above-captioned appeal, Apple appeals the ITC’s decision as to the ’731 and ’941 patents. Thus, as Apple did in AliveCor’s appeal, AliveCor now seeks to intervene in Apple’s appeal here.

As the complainant in the underlying Investigation, AliveCor has a substantial and undisputable interest in the outcome of this appeal. It is well established that a party who prevailed before the ITC is “entitled to participate” in the ensuing appeal

by the non-prevailing party. *Surface Tech., Inc. v. U.S. Int’l Trade Comm’n*, 780 F.2d 29, 31 (Fed. Cir. 1985); *see also* Order, *Diebold Nixdorf, Inc. v. Int’l Trade Comm’n*, No. 17-2553 (Fed. Cir. Oct. 18, 2017), Dkt. 25 (granting complainants’ motion to intervene in the respondents’ appeal from the ITC’s decision finding Section 337 liability).

In this appeal, Apple seeks to overturn the ITC’s ruling that it infringes AliveCor’s valid ’731 and ’941 patents. AliveCor should be allowed to intervene to ensure that its patent rights are upheld. The ITC, which is the Appellee in this appeal, is unlikely to adequately and fully represent AliveCor’s interests. *See, e.g., Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736-37 (D.C. Cir. 2003) (observing that governmental entities often have different interests from private litigants).

For these reasons, AliveCor respectfully requests that this Court grant the motion to intervene.

Dated: March 7, 2023

Respectfully submitted,

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/s/ Sean S. Pak

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Counsel for AliveCor, Inc.

FORM 9. Certificate of Interest

Form 9 (p. 1)
March 2023

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 23-1553

Short Case Caption Apple Inc. v. International Trade Commission

Filing Party/Entity AliveCor, Inc.

Instructions:

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
3. In answering Sections 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance.
4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 03/07/2023

Signature: /s/ Sean S. Pak

Name: Sean S. Pak

FORM 9. Certificate of Interest

Form 9 (p. 2)
March 2023

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="checked" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input type="checkbox"/> None/Not Applicable
AliveCor, Inc.		OMROM Corp.

☐ Additional pages attached

FORM 9. Certificate of Interest

Form 9 (p. 3)
March 2023

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable ☒ Additional pages attached

Quinn Emanuel Urquhart & Sullivan, LLP	S. Alex Lasher	Andrew Holmes
Adam B. Wolfson	Phillip Ducker	Peter Benson
Brian Saunders	Catherine R. Lacey	John W. McCauley

5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☒ Yes (file separate notice; see below) ☐ No ☐ N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☒ None/Not Applicable ☐ Additional pages attached

Attachment to AliveCor's Certificate of Interest

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

(cont.)

Kevin Gu
Michelle Clark
James Glass
Matt Hosen
Bruce Lee
Richard Doss
Isabel Peraza
Evan Larson
Haihang Wang
Joshua Scheufler
James Darling
Scott Watson
Robin McGrath
Stephen Klapper
Nicolas Siebert
Krishna Shah
John McKee
Nicholas Caluda
Lora Green

CERTIFICATE OF COMPLIANCE

In accordance with Federal Rules of Appellate Procedure 27(d)(1)(E), 27(d)(2)(A), and 32(g)(1), I certify that the foregoing motion is proportionately spaced using 14-point Times New Roman font and contains 387 words, excluding the parts of the motion exempted from length limits by Rules 27(d)(2) and 32(f).

Dated: March 7, 2023

/s/ Sean S. Pak
Sean S. Pak